IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04-10-2007

Coram :

The Hon'ble Mr. Justice ELIPE DHARMA RAO
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.36769 of 2004

N.George ... Petitioner

vs.

1. The State of Tamil Nadu
   Rep. by The Inspector General of Police
   Armed Police, Kilpauk,
   Chennai - 10.

2. The Deputy Inspector General of Police
   Armed Force, Kilpauk,
   Chennai - 10.

3. The Commandant
   Tamil Nadu Special Range, III Bn,
   New Delhi - 64.

4. The Registrar
   Tamil Nadu Administrative Tribunal,
   High Court Campus, Chennai. .. Respondents

Writ Petition, seeking certiorarified mandamus is filed by the petitioner, under Article 226 of the Constitution of India, to call for the records relating to the order passed in O.A.No.10428 of 1998, dated 06.03.2003 on the file of the fourth respondent and quash the same in part, so far as it failed to pay the back wages to the petitioner and to direct the respondent to pay the back wages from the date of termination till the date of his reinstatement in service.

For Petitioner : Mr.N.G.R.Prasad for
Ms.Devi Shankar
For Respondents : Mr.K.Balakrishnan, AGP

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O R D E R

S.TAMILVANAN, J

This writ petition has been directed against the order dated 06.03.2003 made in O.A.No.10428 of 1998 by the Tamil Nadu Administrative Tribunal, Chennai, whereby the application has been partly allowed, setting aside the impugned order therein with the direction to reinstate the petitioner in service, depriving of back wages.

2. The brief facts of the case are as follows :

It is an admitted fact that the petitioner was recruited as Police Constable in the Tamil Nadu Special Force Battalion III in the year 1994 and sent on deputation to New Delhi, for doing guard duty at Dihar Central Prison in January 1997. On 25.09.1997, the petitioner was on security duty in Jail No.5 at Dihar prison between 9.00 p.m and 2.00 a.m, during night hours. After finishing his duty at about 2.00 a.m, while he was returning to his barracks, according to him, due to stomach pain he went to an adjacent place, where water facility was available to attend calls of nature. While so, he heard some noise inside the quarters and a few persons running towards him, caught hold of him and also shouting at him in Hindi. The petitioner could not understand what was going on due to language problem. He was subsequently released from the crowd at the instance of another official. According to the petitioner, the Inspector therein told him that the matter would be closed, if he would spend some money, which was refused by the petitioner. Then, he was issued with the charge memo, under Rule 3 (b) of TNPSS (D&A) Rules and also suspended from service, with effect from 15.10.1997. Departmental enquiry was held by the Assistant Commissioner of the Battalion, during the course of which, the Inspector of Police, Sub Inspector of Police of 'C' Company and others were examined. In the enquiry, the petitioner herein gave his explanation that while he was returning to his barracks after attending duty, due to his stomach pain, he went to answer nature's call, for which he had chosen an open place, which happened to be nearby the newly built multi storied building, where women workers were also dwelling and he was mistakenly caught hold of by the persons therein, under a wrong assumption, without knowing the facts. The enquiry officer held his findings against the petitioner and the appeal preferred by him was also dismissed by the Deputy Inspector General of Police, Armed Reserve, Chennai. Aggrieved by which, the petitioner preferred Original Application before Tamil Nadu Administrative Tribunal, Chennai.

3. The Administrative Tribunal, after considering the evidence and other materials available on record, has held that the petitioner was not motivated in indulging in any violent or illegal activity and admittedly, he has not molested anybody. The Tribunal found that the service record of the petitioner had been very good, which is also not in dispute. The

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Tribunal has further held that the petitioner has not been punished for any misconduct in the past 5 years, while he was in service and accordingly, held the punishment of removal of petitioner from service as highly disproportionate and too harsh. Accordingly, the punishment imposed on the petitioner by the authorities has been set aside by the Tribunal with a direction to reinstate him without back wages. Aggrieved by the said order, the petitioner / applicant has preferred this writ petition.

4. Mr.N.G.R.Prasad, learned counsel appearing for the petitioner would contend that it has been admitted by the respondents that there are no bad antecedents against the petitioner in his service and he had unblemished records to his credit. Similarly, it is not in dispute that he had language problem, as he was not conversant with Hindi. On 25.09.1997, admittedly, he was on security duty in Dihar Jail between 9.00 p.m and 2.00 a.m during night hours. When the petitioner was returning, after his duty at 2.00 a.m, as he was suffering from stomach pain, he went to a place behind the Dihar Jail for attending nature's call, without any motive and also not knowing about the women workers sleeping there in the building. While so, he was caught hold of by some male workers and he could not understand what they were speaking in their language. As held by the Tribunal, during the enquiry, the petitioner has clearly explained the above facts. According to the learned counsel for the petitioner, in the above said circumstances, there was no necessity for the petitioner to go to the place, except for the reason stated by him. The contesting respondents have also not made any allegation of molestation or any other specific allegation against the petitioner, as found by the Tribunal. In order to establish the charges, no women worker available at the place of occurrence was examined as witness and therefore, according to the learned counsel, the petitioner, an innocent police constable has been put to hardship and suffering due to his language problem and subsequently removed from service.

5. The Administrative Tribunal, considering the evidence available on record and also the arguments advanced on both sides, had held that there are no bad antecedents against the petitioner and his previous conduct was very good as per his service record for the past 5 years and that he was hailing from a good family. It is also not in dispute that there is no writ petition filed by the respondents 1 to 3 against the order of the Tribunal. Therefore, the only question to be decided is whether the petitioner is entitled to back wages, as claimed by him in the writ petition.

6. It is clear that the petitioner would be entitled to back wages, if he is totally an innocent person and subjected to harassment of removal from service without any legally acceptable evidence. It cannot be disputed that utmost discipline should be maintained by everyone, especially the persons who are in disciplined service, but no one can be punished without legally acceptable evidence, since rule of law is paramount in a civilized society.

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7. As per the charge, on 25.09.1997 at about 2.30 in the early morning, the petitioner went to the dwelling place of the building workers (second floor) located on the rear side of prison number 5, with an intention to do some misbehaviour.

8. As per the enquiry proceedings, the Building Engineer told that the petitioner had made an attempt to enter into the premises of the building and the same was stated by him to the Inspector of 'C' Company, III Battalion, who was examined as P.W.1. Sub Inspector, Manimaran, Havildar 1439 , Murugan were also examined as P.Ws.2 and 3 respectively. Thiru.Azand Sha, Dihar Jail Building Engineer was examined as P.W.4, has stated in his evidence before the enquiry officer that on 25.09.1997 at about 2.30 a.m, one person of TSP made an attempt to trespass into the newly constructed building, where the building workers were staying and that person was caught hold of by the building workers with the help of CSID staff. He has further stated that he did not know the reason for which the said constable 320 George (petitioner herein) trespassed into the house.

9. As contended by the learned counsel for the petitioner, though the witnesses have stated that number of women workers were dwelling in the building, none of the women worker was examined to prove the alleged occurrence, for the reasons best known to the authorities. Further, as per the evidence, even male workers were also dwelling there, but none of them were examined as witness. Admittedly, no complaint by any women worker was given. According to the petitioner, only a false complaint was given against him and further, in his written explanation, he has stated, neither the Engineer nor any other person had given any complaint to the Sub Inspector of 'C' company, who brought him back to the company, but the Inspector and another made a demand to pay Rs.3,500/- from him to solve the problem, but the petitioner refused to pay the same saying that he had not committed any wrong so as to pay the amount demanded by them.

10. As per the enquiry proceedings, the very suspicious circumstance is that when a person entered into the second floor, he stepped down the leg of a boy, aged 10 years by name Paplu, who shouted 'Chori, Chori'. It is not in dispute that 'Chor' means, Thief and 'Chori' means feminine gender of Thief and therefore, the 10 year old boy Paplu could have identified any women there and shouted as Chori, Chori, but the petitioner, who was not conversant with the local language was caught hold of, without any complaint from any woman worker and without examining the women worker or other persons, who were dwelling in the building, and thus, he was put to hardship and suffering. It is also pertinent to note that the petitioner was not caught hold of at the first or second floor of the building. It could be seen that out of the four witnesses, no one was an eye witness for the occurrence.

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11. The enquiry being held against the petitioner was violative of principles of natural justice. Further, as per the statement given by Azand Sha recorded by Inspector of 'C' Company, the petitioner had made only an attempt to trespass, but he would state further that he did not know the reason for which he tried to trespass into the building. Admittedly, no criminal case was filed against the petitioner on the basis of the alleged occurrence. As the petitioner has raised serious allegation against the Inspector that he had demanded a sum of Rs.3,500/- to settle the matter, independent witnesses who were available at the place of occurrence could have been examined.

12. In the decision Nand Kishore vs. State of Bihar, reported in AIR 1978 SC 1277, the Hon'ble Supreme Court has clearly ruled that suspicion cannot be allowed to take the place of proof even in domestic enquiry.

13. In the instant case, it is not in dispute that the petitioner had been doing guard duty at Dihar Central prison as a member of the Tamil Nadu Special Police. As per the finding of the Tribunal, there was a newly constructed building, on the rear side of prison number 5, where construction workers were staying. As per the evidence available on record, even male workers were also staying there. The defence plea raised by the petitioner is that he went only to attend nature's call at the rear side, but on seeing him three persons came and caught hold of him. While, he was enquired in the language not known to him, he replied in his mother tongue Tamil. Only on suspicion, he was caught hold of and detained, though he has not committed any illegal act.

14. On the above circumstances, it is clear that only on mere suspicion, it has been incorporated in the charges that the petitioner had an intention to do some misbehaviour and hence, trespassed in to the building. We are of the view that in the absence of any complaint by any woman worker or any other workers dwelling at the place, it could be construed that the charge had been framed without any basic materials.

15. In the light of the ruling of the Hon'ble Apex Court referred above and on the materials and evidence available on record, we are of the considered view that only on suspicion, the petitioner had been put to harassment, in spite of his specific allegation against the Inspector that he had demanded money for amicably settling the matter. Therefore, we are inclined to hold that in the domestic enquiry, violating the principles of natural justice, the conclusion against the petitioner has been arrived at, without any legally acceptable evidence and materials and therefore, to meet the ends of justice, we find it proper and reasonable to allow the writ petition.

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16. In the result, this writ petition is allowed. However, there is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

tsvn

To

1. The Inspector General of Police
   State of Tamil Nadu
   Armed Police, Kilpauk,
   Chennai - 10.

2. The Deputy Inspector General of Police
   Armed Force, Kilpauk,
   Chennai - 10.

3. The Commandant
   Tamil Nadu Special Range, III Bn,
   New Delhi - 64.

1 cc To Mr.K.Shankar, Advocate, SR.61401.
1 cc To The Government Pleader, SR.61812.

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